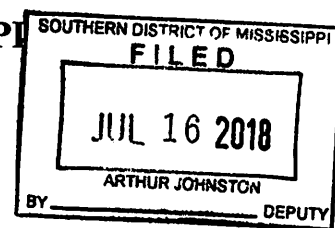


**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**



DOUGLAS HANDSHOE

v.

CIVIL ACTION NO. 1:15cv382-HSO-JCG

VAUGHN PERRET, CHARLES LEARY &
DANIEL ABEL, D/B/A/ TROUT POINT
LODGE LTD OF NOVA SCOTIA & IN
THEIR INDIVIDUAL CAPACITIES
PROGRESS MEDIA GROUP LIMITED,
MARILYN SMULDERS, & ASHOKA

**REBUTTAL OF CHARLES LEARY'S OPPOSITION
TO MOTION TO DISMISS (ECF NOS. 258 & 259)**

Plaintiff Douglas Handshoe respectfully submits this rebuttal of Charles Leary's Opposition, filed out of time, to Plaintiff's Motion to Dismiss Mr. Leary's counterclaims.

In support of this rebuttal Plaintiff will again demonstrate Leary's counterclaims: 1) Do not meet the heightened pleading requirements for fraud required by Fed. R. Civ. P. 9(b); 2) The counterclaims asserted by Leary are contained in the form of "shotgun pleading" that fails to give fair notice to the Plaintiff as to exact nature of the allegations being made against him individually; 3) The basis for this Court's jurisdiction was not specifically pleaded by the Defendant / Counterclaimant. As a self-admitted "stateless" United States citizen, counterclaimant Leary cannot invoke this Court's powers to hear matters under the

Court's diversity jurisdiction related to the numerous Mississippi common law counterclaims asserted by him. These state common law claims do not confer standing to sue under federal question jurisdiction and in any event are valued by the Counterclaimant at under \$75,000; 4) All the associated state common law claims are both preempted by the Federal Copyright Act; 5) The counterclaims made by Leary against Handshoe are procedurally time barred; 6) Leary's First Amended Answer and Counterclaims fail to adequately plead essential elements of a claim under 17 U. S. C. § 512(f) and also fail to adequately plead multiple elements of the relevant state common law causes of actions; 7) The Copyright Claims asserted by Leary have been previously litigated against instant Plaintiff under the Canadian Copyright Act thus counterclaimant Leary is both claim and issue precluded from re-asserting them against instant Plaintiff; 8) The acts that Leary alleges were perpetrated by the Plaintiff were in his capacity as member, manager and /or officer of Slabbed New Media, LLC. As a result, Leary has not brought any claims against the proper party, Slabbed New Media, LLC thus, these claims are barred by Mississippi Code Annotated § 79-29-311; and 9) Mr. Leary also Counterclaimant lacks standing to bring the counterclaims.

Finally, Plaintiff will show that Leary's Counterclaims for Fraud have been previously litigated before this Court in another matter and that any attempt to amend any of his counterclaims would be futile.

These reasons are more fully explained in the contemporaneously filed memorandum in support of this rebuttal. Plaintiff prays this Court dismiss defendant Leary's counterclaims.

Attached to this Motion are the following exhibits which this court can consider "as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice" *Tellabs, Inc.*, 551 U.S. at 322 (citing 5B C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE, § 1357 (3d ed. 2004 & Supp. 2007)):

Exhibit 1: MSSD Case Number 1:12-cv-0090-LG-JMR, ECF No. 63

Exhibit 2: MSSD Case Number 1:12-cv-0090-LG-JMR, ECF No. 64

Exhibit 3: MSSD Case Number 1:12-cv-0090-LG-JMR, ECF No. 66

Respectfully submitted this 16th day of July, 2018,



Plaintiff
Douglas Handshoe
Post Office Box 788
110 Hall Street
Wiggins, MS 39577
(601) 928-5380
earning04@gmail.com

CERTIFICATE OF SERVICE

I, Douglas Handshoe, hereby certify that on July 16, 2018 the foregoing was sent for electronically filing by me via the Clerk of the Court using the ECF system which sent notification to all counsel of record upon filing by the Clerk.

I, Douglas Handshoe, hereby certify that on July 16, 2018, I mailed the foregoing to Charles Leary at 308 5th Ave E, Vancouver, BC V5T 1H4 Canada with a courtesy copy to.

Respectfully submitted this 16th day of July, 2018,



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